Supreme Court, U.S.
FILED
00-267 AUG 17 2000
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

BARBARA ASHLEY,

Petitioner,

v.

BLUE CROSS AND BLUE SHIELD OF MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

BARBARA ASHLEY
3333 26th Avenue East
Bradenton, Florida 34208
(941) 747-1952

Petitioner

240

QUESTION(S) PRESENTED

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) 29 U.S.C. § 1132. Civil enforcement

(a) Persons empowered to bring a civil action

(1) by a participant or beneficiary –

(A) for relief provided for in subsection (c) of this section, and

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title.

TABLE OF CONTENTS

Page

QUESTION(S) PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 8

TABLE OF AUTHORITIES

Page

FEDERAL STATUTES

28 U.S.C. §§ 1254(1), 2106, and 2072 2

28 U.S.C. § 2403(a) 2

ERISA, Pub.L. No. 93-406, 88 Stat. 829 (1974) 2, 7

29 U.S.C. §§ 1001, *et seq*..... 5

29 U.S.C. § 1025(c) 3

29 U.S.C. § 1132(a)(1)(B) 7

29 U.S.C. § 1451(d) 5

PETITION FOR A WRIT OF CERTIORARI

Petitioner Barbara Ashley prays that a writ of certiorari will issue to review the judgment of the courts below, which denied participant's constitutional rights to retirement benefits and that the Court will intervene for a proper presentation of the facts and law relating to the question of constitutionality.

OPINIONS BELOW

The order of the United States Court of Appeals for the Sixth Circuit affirming the district court's judgment is unpublished, and is found in the Appendix at p.1. The decision of the United States District Court for the Eastern District of Michigan is found in the Appendix at p.5.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on June 16, 2000. (App. 1). A timely Petition for Rehearing was denied on August 8, 2000. The writ of certiorari is filed under this Court's Rule 14. The constitutional question of law in the proceeding involves a substantive right existing under the Constitution of Laws of the United States under the "Employee Retirement Income Security Act of 1974" (ERISA), and is believed to confer on this Court jurisdiction to review the Order in question.

The constitutionality of an Act of Congress is drawn into question in the proceeding and in accordance with

this Court's Rule 29.4(b), 28 U.S.C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1254(1), 2106, and 2072.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the "Employee Retirement Income Security Act of 1974," Pub.L. No. 93-406, 88 Stat. 829 (1974).

STATEMENT OF THE CASE

The question of law arises from petitioner's 18.917 years of service with Blue Cross and Blue Shield of Michigan as a participant under the Blue Cross and Blue Shield of Michigan Retirement Income Plan (BCBSM RIP). The BCBSM RIP was the only existing plan for all employees from the time the company was founded in 1939 and during the course of my employment. The effective date of the BCBSM RIP is July 1, 1948. It is an ERISA-governed plan. BCBSM is the plan administrator of the RIP.

I was first employed with BCBSM on June 4, 1971, and at all times was a vested participant in the BCBSM RIP. My employment continued through April 30, 1990, at which time my employment ended due to a disability. I separated from BCBSM as a Total and Permanent Disability Retirement Benefit employee. I was credited with

18.917 years of service at BCBSM through April 30, 1990. I was age 50 on April 30, 1990.

Various benefits provided by the RIP for which I was eligible were and are vested and nonforfeitable as of April 30, 1990. The RIP provides for a disability retirement benefit for participants who become totally and permanently disabled after completing 10 or more years of eligibility service. The amount of the benefit is the same as if the participant had retired at age 65. I meet the qualifications under the terms of the plan agreement. The monthly pension benefits should have commenced May 1, 1990.

Instead, my Notice of Separation Form was changed from "Voluntary-Health" to "Leave of Absence-Long Term Disability" without my approval or signature.

BCBSM violated Part 4 under Subtitle B of Title I of the Act by refusing to recognize their fiduciary duty to carry out the terms of the plan in accordance with the documents and written instruments governing the plan.

BCBSM violated Part 1 under Subtitle B of Title I of the Act by failing to recognize their fiduciary duty to report participant's benefit rights and to notify participant before the expiration of the time prescribed for filing with the Secretary the annual registration and information statement concerning pension, etc. plans as required by 29 U.S.C. § 1025(c).

On July 20, 1990, I was enrolled by the BCBSM Human Resources Department in the National Long Term Disability (LTD) Program, which is an employee welfare

benefit plan that is coordinated with the RIP. It is administered by the Blue Cross and Blue Shield Association (BCBSA) in Chicago, Illinois.

On July 31, 1991, BCBSA notified BCBSM of my Social Security Award retroactive to May, 1990, the date that my pension benefits should have commenced.

BCBSM notified me in October, 1993 of my eligibility for a deferred vested retirement benefit, again refusing to recognize their original fiduciary duty to notify me of my eligibility for the accrued vested benefits under the RIP in May, 1990.

As a result of BCBSM's refusal to pay me the retroactive retirement benefits, I applied for the deferred vested benefit which was $404.63 a month, effective December 1, 1994.

Following a number of written and oral communications with BCBSM, I learned that BCBSM had decided to continue to apply the rules of their 1995 plan.

BCBSM stated that they would treat my request for retroactive retirement benefits as a request for a disability benefit under the terms of the 1995 plan, and in August, 1995 sent me a check for an additional $227.61 a month retroactive to December 1, 1994.

BCBSM denied my request of August 30, 1995 for a copy of the plan document.

BCBSM denied my request of September 5, 1995 for a full and fair review of their benefit denial.

In January, 1996, I retained the services of Florida counsel, Karen Keaton. Ms. Keaton made demands twice

for the retirement benefits and advised BCBSM that her client is asserting against BCBSM the penalty in the amount of $100 a day beginning August 30, 1995 for their intentional and willful failure to provide the requested copy of the plan document. Upon receipt of Ms. Keaton's first letter, BCBSM sent me a copy of the 1995 plan document.

Ms. Keaton advised BCBSM that she and her client were of the understanding that the plan adopted in April, 1995 would obviously not be a plan in effect at the time of my employment, nor was I advised of any "amendment" to the then existing plan. Ms. Keaton stated that she believed that an agreement as to the plan that was in effect for me would greatly reduce the amount of time and effort necessary to resolve my pension benefit dispute.

On September 10, 1997, through Falcone & Rolfe, P.C., I brought suit against BCBSM pursuant to 29 U.S.C. § 1451(d) under the provisions of ERISA 29 U.S.C. §§ 1001, *et seq.*, solely for the purpose of recovering benefits due to participant under the terms of her plan. (R.1 COMPLAINT).

BCBSM's answers to the allegations in plaintiff's complaint and to the interrogatories are based on the rules of the 1995 plan. BCBSM was noncompliant to plaintiff's request for production of supportive documents.

A bench trial commenced on September 1, 1998. There was a lot of confusion about plans and ridiculous testimony. Plaintiff's evidence was suppressed from the courtroom and the only plan document on the table was

the 1995 plan. Counsel reached an agreement in an amount of $70,000 to settle all claims based on the terms of the 1995 plan.

After an hour break, I was threatened that if I did not agree to an amount of $70,000, I would receive nothing. I asked questions regarding the terms of the settlement and my words are taken out of context in the transcript. An amount of $606.23 is stated in the transcript eight times and the transcript shows that I agreed to $606.23. I was not aware of the $606.23 amount until I subsequently received the release and settlement agreement from BCBSM. The court had the opportunity to observe me and there is no room for doubt that I knowingly, voluntarily and intelligently agreed to the fraudulent settlement terms on the record. It is unlawful for any person to interfere with my rights under the plan.

I sent the court evidence of the plan that was in effect at my termination date from BCBSM (R.49) and requested the court to enforce my rights. The court denied my request in its final judgment and enforced the fraudulent agreement on the record.

I filed a motion for relief from the judgment pointing out that there is no justification for the district court's decision to enforce a settlement agreement where such a substantial dispute exists regarding the entry into and the terms of an agreement. The motion for relief from judgment was denied.

The constitutional question is raised in my appeal from the district court's decision filed September 24, 1999. Appellant's brief at page 1 states, "A complaint filed September 10, 1997 was brought before the district

court for the sole purpose of enforcing against Blue Cross and Blue Shield of Michigan (BCBSM); Blue Cross and Blue Shield of Michigan Retirement Income Plan (BCBSM RIP) for a substantive right existing under the Constitution of Laws of the United States under the 'Employee Retirement Income Security Act of 1974' (ERISA), Public Law 93-406. (R.1 COMPLAINT, Apx.___)." Appellant's brief at page 9 states, "ERISA provides the exclusive remedy for a participant seeking recovery of benefits denied by an ERISA-governed plan under 29 U.S.C. § 1132(a)(1)(B)."

The facts and legal arguments are adequately presented in appellant's brief. The court has disregarded the constitutional question of law involved in this case and has chosen to ignore three volumes of pleadings on the record, filed September 20, 1999, which include exhibits and attachments of factual evidence of the plan that was in effect at my termination date from BCBSM.

REASONS FOR GRANTING THE WRIT

The United States court of appeals has decided an important constitutional question of law in a way that conflicts with the policies of an Act of Congress, and has sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BARBARA ASHLEY
3333 26th Avenue East
Bradenton, Florida 34208
(941) 747-1952

Petitioner

APPENDIX

Page

Order, Ashley v. Blue Cross & Blue Shield of Michigan, affirming district court's decision, U.S. Court of Appeals, Sixth Circuit, June 16, 2000 .....App. 1

Judgment, Ashley v. Blue Cross Blue Shield of Michigan, U.S. District Court, Eastern District of Michigan, Southern Division, November 13, 1998 .....App. 5

Opinion and Order Denying Request for Plan Documents, Denying Plaintiff's Counsel's Motion to Withdraw, and Ordering Entry of Judgment .....App. 7

Order Denying Petition for Rehearing, U.S. Court of Appeals, Sixth Circuit, August 8, 2000 ....App. 11

No. 98-2346

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BARBARA ASHLEY, Plaintiff-Appellant, v. BLUE CROSS & BLUE SHIELD OF MICHIGAN, Defendant-Appellee.	)	ORDER (Filed Jun. 16, 2000)

Before: JONES, BOGGS, and MOORE, Circuit Judges.

Barbara Ashley, proceeding pro se, appeals a district court judgment enforcing a settlement agreement entered into by the parties to this civil case brought pursuant to the provisions of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461. This case has been referred to a panel of the court pursuant to Rule 34(j)(I), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On September 10, 1997, Ashley, through counsel, filed suit against Blue Cross & Blue Shield of Michigan, her former employer. The complaint alleged that Ashley became totally and permanently disabled during the course of her employment. Ashley requested and received disability pension benefits in accordance with Blue Cross's Retirement Income Plan, but alleged that Blue Cross improperly calculated the amount and the

commencement date of the monthly benefit to which she is entitled.

On September 1, 1998, the district court conducted a bench trial. Following a recess, the parties notified the court that they had reached a settlement, the terms of which were entered on the record, and desired dismissal of the lawsuit. The district court accepted the settlement agreement and subsequently denied the motion to withdraw filed by Ashley's counsel. On October 15, 1998, Ashley filed a pro se "request for plan document," in which she informed the court that she had been coerced into accepting the settlement and requested the court to require Blue Cross to provide her with pension information that she had requested prior to trial and to pay her $100 per day following her request for such information. The district court denied Ashley's request for plan documents, enforced the settlement agreement, and entered a final judgment incorporating the terms of the settlement agreement. The district court also denied Ashley's pro se motion for relief from judgment. Ashley filed a timely pro se notice of appeal.

A district court's decision to approve a settlement agreement is reviewed for an abuse of discretion. *See Odomes v. Nucare, Inc.*, 653 F.2d 246, 252 (6th Cir. 1981). A district court has the authority "to enforce agreements in settlement of litigation before it even if that agreement has not been reduced to writing." *Bowater N. Am. Corp. v. Murray Mach., Inc.*, 773 F.2d 71, 76-77 (6th Cir. 1985) (citations omitted); *accord Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). Enforcement of a settlement agreement is appropriate where no substantial dispute

exists regarding the entry into and terms of an agreement. *See Kukla v. National Distillers Prods. Co.*, 483 F.2d 619, 621 (6th Cir. 1973). "[O]nly the existence of fraud or mutual mistake can justify reopening an otherwise valid settlement agreement." *Brown v. County of Genesee*, 872 F.2d 169, 174 (6th Cir. 1989).

Upon review, we conclude that the district court did not abuse its discretion by enforcing the settlement agreement entered into in this case. *See Odomes*, 653 F.2d at 252. The terms of the parties' settlement agreement were placed on the record in the presence of the court, the district court inquired as to the voluntariness of the parties' decisions, and both parties expressed their assent to the terms of the agreement. Ashley asked several questions of counsel for Blue Cross and indicated that the response to those questions was satisfactory to her. Ashley testified under oath that she understood all of the terms of the settlement agreement, agreed with those terms, and desired to voluntarily dismiss her lawsuit. The district court subsequently incorporated the terms of the settlement agreement into a final judgment.

The settlement agreement placed on the record settled all of Ashley's claims against Blue Cross, including her requests for attorney fees and daily penalties. The transcript reveals that the parties agreed to the terms of the settlement agreement and that Ashley knowingly, voluntarily, and intelligently accepted those terms. Ashley's contention that she was coerced into agreeing to the settlement is simply belied by the record and she has offered absolutely no evidence to contradict the district court's specific finding that she entered into the agreement voluntarily and intelligently. *See* Fed. R. Civ. P.

52(a); *Brock*, 841 F.2d at 154. Nor has Ashley presented any evidence of a mutual mistake or fraudulent misrepresentation which would justify voiding the settlement agreement in this case. *See Brown*, 872 F.2d at 174-75. The fact that Ashley may have had a change of heart following the settlement or that she erroneously believed that the agreed upon amount of compensation was "partial payment" is, at most, a unilateral mistake, which is insufficient to invalidate the otherwise valid settlement agreement entered into by the parties. *See id.*

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA ASHLEY,
an individual,

Plaintiff,

vs.

BLUE CROSS BLUE SHIELD OF MICHIGAN,
a Michigan corporation,

Defendant.
_____/

Case No. 97-CV-60255-AA
HON. GEORGE CARAM STEEH

JUDGMENT

The above entitled matter has come before the court on plaintiff's request for certain pension plan documents and a $100.00 per day penalty as against defendant Blue Cross and Blue Shield of Michigan (BCBS), and Falcone & Rolfe, P.C. motion to withdraw as plaintiff's counsel. In accordance with the court's NOV 09 1998 order denying both motions and ordering entry of final judgment in accordance with the parties' September 1, 1998 settlement agreement,

IT IS ORDERED AND ADJUDGED that judgment hereby is GRANTED in favor of plaintiff Barbara Ashley and against defendant BCBS as follows: (1) plaintiff is entitled to a gross payment of $71,170.45, with $1,170.45 repaid to BCBS against accrued benefit overpayments, resulting in a net payment to plaintiff of $70,000.00; (2)

this net $70,000.00 payment settles all claims including claims for attorney fees; (3) for as long as she remains totally and permanently disabled and until she reaches age 65, plaintiff is entitled to receive a monthly pension disability benefit of $606.23; (4) if plaintiff remains totally and permanently disabled until she reaches age 65, her $606.23 monthly pension disability benefit will convert at age 65 to a $606.23 monthly term vested benefit, with plaintiff entitled to receive this monthly term vested benefit until she dies, and; (5) plaintiff is entitled to receive long term health care as a long term disability benefit for as long as she remains totally and permanently disabled.

Dated at Ann Arbor, Michigan, NOV 09 1998.

JOHN P. MAYER
CLERK OF THE COURT

By: /s/ J. Chaffee
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA ASHLEY, an individual,

Plaintiff,

vs.

BLUE CROSS BLUE SHIELD OF MICHIGAN, a Michigan corporation,

Defendant.
_____/

Case No. 97-CV-60255-AA
HON. GEORGE CARAM STEEH

OPINION AND ORDER DENYING REQUEST FOR PLAN DOCUMENTS, DENYING PLAINTIFF'S COUNSEL'S MOTION TO WITHDRAW, AND ORDERING ENTRY OF JUDGMENT

Plaintiff Barbara Ashley, acting in pro per, requests certain pension plan documents and a $100.00 per day penalty as against defendant Blue Cross Blue Shield of Michigan (BCBS). Falcone & Rolfe, P.C. moves to withdraw as plaintiffs counsel. Oral argument would not significantly aid the decisional process. Pursuant to E.D. Mich. Local R. 7.1(e)(2), it is ORDERED that the motions be resolved without oral argument. For the reasons set forth below, plaintiffs request for plan documents and the assessment of $100.00 penalties will be denied, Falcone & Rolfe, P.C.'s motion to withdraw as plaintiffs counsel will be denied, and judgment shall summarily enter consistent with the September 1, 1998 settlement agreement placed on the record.

Plaintiff, a former employee of defendant BCBS, filed this action seeking certain benefits under retirement and disability plans governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1101 *et seq.* A bench trial commenced on September 1, 1998. During the trial, the parties reached a settlement agreement that was placed on the record. *See* Transcript of Settlement Hearing, September 1, 1998. The parties agreed that the case would be settled on the following terms: (1) plaintiff is entitled to a gross payment of $71,170.45, with $1,170.45 repaid to BCBS against accrued benefit overpayments, resulting in a net payment to plaintiff of $70,000.00; (2) this net $70,000.00 payment settles all claims including claims for attorney fees; (3) for as long as she remains totally and permanently disabled and until she reaches age 65, plaintiff is entitled to receive a monthly pension disability benefit of $606.23; (4) if plaintiff remains totally and permanently disabled until she reaches age 65, her $606.23 monthly pension disability benefit will convert at age 65 to a $606.23 monthly term vested benefit, with plaintiff entitled to receive this monthly term vested benefit until she dies, and; (5) plaintiff is entitled to receive long term health care as a long term disability benefit for as long as she remains totally and permanently disabled. After being sworn, plaintiff testified that she understood and agreed to these settlement terms, and that she wanted to settle the case. *Id.*, at 7-8.

District Court's enjoy an "inherent power to summarily enforce settlement agreements entered into by

parties litigant in a pending case." *Kukla v. National Distillers Products Co.*, 483 F.2d 619, 621 (6th Cir. 1973) (citation omitted). This authority includes the power to enter final judgment on a settlement, even where the settlement has not been entered into in open court. *Id.* Summary enforcement of a settlement agreement through entry of a final judgment is appropriate "where there exists no substantial dispute as to the entry into, or the terms of, the agreement. . . . " *Id.*

As reflected in the September 1, 1998 Transcript, there exists no substantial dispute that plaintiff Ashley and defendant BCBS entered into a specific agreement in open court to settle this case. The court had the opportunity to observe and question plaintiff, and there is no room for doubt that she knowingly, voluntarily, and intelligently agreed to the settlement's terms intending to settle her claims. The settlement agreement acknowledged by the parties on the record merits summary enforcement through the entry of a final judgment incorporating the settlement terms. *Kukla*, 483 F.2d at 621.

Accordingly, a final judgment shall enter in this case stating that: (1) plaintiff is entitled to a gross payment of $71,170.45, with $1,170.45 repaid to BCBS against accrued benefit overpayments, resulting in a net payment to plaintiff of $70,000.00; (2) this net $70,000.00 payment settles all claims including claims for attorney fees; (3) for as long as she remains totally and permanently disabled and until she reaches age 65, plaintiff is entitled to receive a monthly pension disability benefit of $606.23; (4) if plaintiff remains totally and permanently disabled until she reaches age 65, her $606.23 monthly pension disability benefit will convert at age 65 to a $606.23 monthly

term vested benefit, with plaintiff entitled to receive this monthly term vested benefit until she dies, and; (5) plaintiff is entitled to receive long term health care as a long term disability benefit for as long as she remains totally and permanently disabled. Plaintiffs request for certain pension plan documents and a $100.00 per day penalty as against defendant BCBS, and Falcone & Rolfe, P.C.'s motion to withdraw as plaintiffs counsel, are both hereby DENIED as being moot.

IT IS ORDERED.

/s/ George Caram Steeh
GEORGE CARAM STEEH
United States District Judge

Dated: Nov 09 1998
Ann Arbor, Michigan.

No. 98-2346

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BARBARA ASHLEY,
Plaintiff-Appellant,
v.
BLUE CROSS & BLUE SHIELD OF MICHIGAN,
Defendant-Appellee.

ORDER

(Filed Aug. 8, 2000)

Barbara Ashley, proceeding pro se, has filed a petition for rehearing of this court's order, filed on June 15, 2000, affirming a district court judgment enforcing a settlement agreement entered into by the parties to this civil case brought pursuant to the provisions of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461.

Upon careful consideration, this panel concludes that it did not overlook or misapprehend any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a).

The petition for rehearing is DENIED.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk